

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In Re:
SEARCH WARRANTS

NO: CV-11-340-RMP

ORDER ADDRESSING MOTIONS

10 This matter comes before the Court on *pro se* motions, ECF Nos. 2, 3, and 4,
11 by Louis Daniel Smith, Matthew Darjany, and Chris Olson, respectively, to quash
12 warrants and secure the return of property seized in the execution of those warrants
13 against three Spokane, Washington, properties in connection with a criminal
14 investigation by the United States Food and Drug Administration (“FDA”), and on
15 *pro se* motions by Mr. Smith for leave to file a motion for return of property based
16 upon new evidence, ECF No. 20, for “immediate return of all property based upon
17 new evidence,” ECF No. 21, for reconsideration of a portion of the Court’s prior
18 order at ECF No. 19, ECF No. 24, to “hold evidence seized from 78 parcels
19 pending criminal investigation of agents and actors or to compel the return of items
20 seized for failure to establish probable cause of Title 11 violations,” ECF No. 25

1 (underlining removed), and to “strike U.S.A. pleadings, arguments, and witness
2 testimony for lack of standing” and for default judgment, ECF No. 37.

3 **BACKGROUND**

4 The facts and procedural history of this matter are set forth in the Court’s
5 order at ECF No. 19, denying in part and withholding ruling in part on the
6 Movant’s motions for return of property, ECF Nos. 2, 3, and 4. Therefore, the
7 Court does not repeat the facts here except where necessary for the following
8 analysis.

9 **ANALYSIS**

10 **Motion to Strike Submissions for Lack of Standing**

11 As a preliminary matter, the Court notes that Mr. Smith filed an “objection
12 to unnecessary delay” in resolving the Movants’ pending motions. ECF No. 44.
13 While the Court understands Mr. Smith’s eagerness to secure return of his and the
14 other Movants’ property, Mr. Smith’s motion to strike all submissions, arguments,
15 and proffered witness testimony by the government for lack of standing, ECF No.
16 37, was not noted for hearing until March 13, 2012, and, by the nature of the
17 argument it raises, requires resolution before the other seven pending motions in
18 this case.

19 In his motion to strike for lack of standing, ECF No. 37, Mr. Smith disputes
20 whether the “United States” and the “United States of America” are “legally one
21 and the same.” ECF No. 39 at 2. Mr. Smith also argues that neither the “United

1 States of America" nor the "United States" is a proper party in this civil action and
2 is instead a "third party interloper" because the Movants did not bring a claim
3 against the government or ask the government to appear in this action. ECF No. 37
4 at 2 (underlining emphasis of "third party interloper" removed).

5 The Movants seek return of property seized pursuant to warrants secured in
6 the course of a criminal investigation by the United States Food and Drug
7 Administration. Shortly after the Movants filed their motions for return of
8 property, ECF Nos. 2, 3, and 4, Christopher Parisi, Trial Attorney for the United
9 States Department of Justice, Criminal Protection Branch, entered a notice of
10 appearance on behalf of the federal government. ECF No. 9. In that notice of
11 appearance, Mr. Parisi refers to the government alternatively as the "United States"
12 or the "United States of America." ECF No. 9 at 1.

13 The "United States" and the "United States of America" are interchangeable
14 names for the same entity. *See United States v. Stout*, 74 Fed. Appx. 628, 629 (7th
15 Cir. 2003) ("[T]he terms 'United States of America' and 'United States' are used
16 interchangeably, *see generally*, e.g., U.S. Const. pml, and [defendant's] argument
17 is a nonsensical exercise in semantics") (citing *United States v. Crum*, 288 F.3d
18 332, 334 (7th Cir. 2002) (argument that the Department of the Treasury and the
19 Treasury Department are separate entities "strains credulity")).

1 Moreover, when an individual brings a motion seeking return of property
2 seized by the United States¹, the United States may respond. *See, e.g., United*
3 *States v. Ibrahim*, 522 F.3d 1003 (9th Cir. 2008) (concluding that a district court
4 may treat the government's opposition to a complaint seeking return of property as
5 a motion for summary judgment and treating as a non-issue the fact that the
6 government filed a brief opposing the complaint for return of property). Although
7 Mr. Smith and his fellow Movants did not name the United States as a defendant or
8 respondent in their complaint, they are seeking equitable relief in the form of
9 return of property seized by, and still in the possession of, the United States, and,
10 therefore are, pursuing an action “against the United States.” *Bertin v. United*
11 *States*, 478 F.3d 489 (2d Cir. 2007). In conclusion, there is no issue of standing
12 here, so the Court **denies** Mr. Smith’s motion to strike submissions for lack of
13 standing, **ECF No. 37**.

14 **Motions for Return of Property**

15 The Movants seek return of the seized property under Federal Rule of
16 Criminal Procedure 41(g). ECF Nos. 2, 3, 4, & 25. Rule 41 governs the issuance,
17 contents, execution, and return of search warrants in federal criminal cases. Fed.
18 R. Civ. P. 41. Rule 41(g) “provides a judicial procedure by which any person,

19
20

¹ The Court uses “United States” for brevity and in light of its conclusion that
21 “United States” and “United States of America” are interchangeable.

1 including those not accused of federal offenses, may seek to recover property that
2 has been seized by federal agents.” *United States v. Hall*, 269 F.3d 940, 941 (8th
3 Cir. 2001). Specifically, Rule 41(g) states, in relevant part, “A person aggrieved
4 by an unlawful search and seizure of property or by the deprivation of property
5 may move for the property’s return.”

6 A district court may exercise equitable discretion to hear a Rule 41(g)
7 motion before an indictment is filed. However, before assuming jurisdiction over
8 the civil equitable proceeding, the district court must exercise caution and restraint
9 and must consider the following four factors:

10 1) whether the Government displayed a callous disregard for the
11 constitutional rights of the movant; 2) whether the movant has an
12 individual interest in and need for the property he wants returned; 3)
13 whether the movant would be irreparably injured by denying return of
14 the property; and 4) whether the movant has an adequate remedy at
15 law for the redress of his grievance.

16 *Ramsden v. United States*, 2 F.3d 322, 325 (9th Cir. 1993).

17 If the Court determines that the “balance of equities tilts in favor of
18 reaching the merits of the Rule 41(g) motion, the district court should exercise its
19 equitable jurisdiction to entertain the motion.” *United States v. Kama*, 394 F.3d
20 1236 (9th Cir. 2005). If the Court reaches the merits of a pre-indictment motion
21 for return of property, the Court must determine whether the Movants have shown
that the seizure of their property was illegal and that they are entitled to lawful
possession of their property. *United States v. Martinson*, 809 F.2d 1364 (9th Cir.

1 1987) (“When a motion for return of property is made before an indictment is filed
2 (but a criminal investigation is pending), the movant bears the burden of proving
3 both that the seizure was illegal and that he or she is entitled to lawful possession
4 of the property.”).

5 The Court previously determined that the balance of the *Ramsden*, 2 F.3d at
6 325, factors was unclear based on the parties’ submissions, so the Court held a
7 hearing on February 2, 2012, in Spokane, Washington. *See* ECF No. 19 (Order
8 denying in part and withholding ruling in part on Movants’ motions for return of
9 property at ECF Nos. 2, 3, & 4); ECF No. 31 (Hearing Transcript). Mr. Smith
10 appeared on his own behalf, and Christopher Parisi, Assistant United States
11 Attorney for the United States Department of Justice, Consumer Protection
12 Bureau, appeared on behalf of the Government. The Court heard argument from
13 Mr. Smith and from Mr. Parisi, and witness testimony from Special Agent Dali
14 Borden of the Food and Drug Administration. *See* ECF No. 31. On the witness
15 stand, under oath, Agent Borden recounted the steps taken to date of the hearing in
16 the investigation of which the seizure of Movants’ property formed a part. ECF
17 No. 31 at 6-13.

18 The Court now has reviewed the *Ramsden*, 2 F.3d at 325, factors in light of
19 the information provided at the hearing. The first factor, callous disregard by the
20 government, weighs heavily against the Court’s assuming jurisdiction because the
21 government does not appear to have displayed callous disregard for the Movants’

1 rights. To the contrary, the government acted pursuant to search warrants in
2 obtaining the property sought to be returned.

3 The second and third factors, interest and need in the seized property and
4 irreparable injury without return of the property, weigh more in favor of the
5 Movants than the government, but not decidedly so. The record is not entirely
6 clear with respect to which Movant has an individual interest and need in which
7 property. Mr. Smith, who was the only Movant to appear at the hearing, seeks
8 return of all of the property seized pursuant to all of the warrants at issue, including
9 the property contained in parcels at the U.S. Post Office, but Mr. Darjany and Mr.
10 Olson apparently seek return only of property seized from their places of business.

11 *Compare* ECF No. 4 & 25 with ECF Nos. 2 & 3. Without deciding whether Mr.
12 Smith has standing to claim an interest in property seized from other Movants, the
13 Court finds that it is undisputed that the Movants have an interest in the property,
14 and appear to have a need for some of that property, such as office equipment,
15 technology, and records. However, the government also has a continuing need for
16 some of that property, and Movants have not demonstrated any need for the
17 potentially dangerous seized inventory of Magical Mineral Solution and related
18 products.² Furthermore, the government has retained the Movants' property for

19 ² The government acknowledged that it no longer needed some of the seized
20 property and represented that it would return an iPhone allegedly belonging to
21 Karis Delong, which had no apparent use to the government because it had been

1 nearly nine months without issuing an indictment, increasing the likelihood of
2 harm to the Movants' businesses. Despite those factors, the Court finds no
3 showing by the Movants of irreparable harm at this point in time.

4 Finally, regarding the fourth factor, the Movants are not without an adequate
5 remedy at law because the government's investigation is active and ongoing, and it
6 appears headed toward a criminal prosecution, at which time the Rule 41(g)
7 motions could be renewed within the criminal case itself. *See Ramsden*, 2 F.3d at
8 326; ECF No. 31 at 6-13 (testimony of Agent Borden explaining that the
9 investigation has been broad in scope in that it has involved review of numerous
10 gigabytes of electronic information and has examined the shipping of

11 "wiped and . . . turned off from a remote location," along with several other items
12 seized from the Movants' properties. ECF No. 31 at 13. Therefore, it is troubling
13 that, according to the letters submitted by Mr. Smith, the government has not
14 returned the iPhone as of the date of this pleading. ECF Nos. 40 & 41. However,
15 the government appeared to have made provisions to return: (1) a "Seagate Free
16 Agent 1500 GB [hard drive?]," a "Stealth MXP USB thumb drive," a "Disk Go
17 USB Drive," an "HP Presario A900 Laptop computer," and a "Seagate Free Agent
18 USB Drive," to Movant Mr. Smith, ECF No. 40; and (2) a "Sandisk USB thumb
19 drive," a "Toshiba Satellite laptop computer," "E Machines Desktop computer,"
20 and an "I Omega external hard drive" to Movant Mr. Darjany, ECF No. 41.

1 approximately 70,000 packages by Project Greenlife throughout the United States
2 and the world and representation by Mr. Parisi that the prosecution expects the
3 investigation to be ongoing and result in a presentation to a grand jury for an
4 indictment).

5 For the foregoing reasons, the Court declines to exercise its equitable
6 jurisdiction over the Movants' pre-indictment Rule 41(g) motions, and those
7 motions, ECF Nos. 2, 3, 4, & 25, are denied.

8 **Motion for Reconsideration**

9 Mr. Smith moves the Court to reconsider its January 25, 2012, Order at ECF
10 No. 19 with respect to its determination that Mr. Smith, proceeding pro se, may file
11 motions and appear in his personal capacity, but may not seek relief on behalf of
12 "Project Greenlife PMA, a Private Membership Association." ECF No. 19 at 4
13 (Order); ECF No. 24 (motion for reconsideration). The Ninth Circuit has held that
14 reconsideration of orders, such as summary judgment orders, could be appropriate
15 "if the district court (1) is presented with newly discovered evidence, (2)
16 committed clear error or the initial decision was manifestly unjust, or (3) if there is
17 an intervening change in controlling law." *School Dist. No. 1J, Multnomah County,*
18 *Or, v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993).

19 None of these circumstances is present here. Rather, associations, like
20 corporations, cannot be represented in court, or in court filings, by a layperson;
21 they must appear through an attorney. *Church of New Testament v. United States*,

1 783 F.2d 771, 773-74 (9th Cir. 1986) (compiling cases). Moreover, “non-attorney
2 litigants may not represent other litigants.” *Church of the New Testament*, 783
3 F.2d at 774. The Court denies Mr. Smith’s motion for reconsideration, ECF No.
4 24. Mr. Smith cannot appear for Project Greenlife to pursue any claims on its
5 behalf.

6 **Motion for Immediate Return of All Property Based Upon New**
7 **Evidence and Accompanying Motion for Leave to File**

8 Mr. Smith moves for leave to file, ECF No. 20, a motion that he
9 simultaneously filed seeking immediate return of all property, ECF No. 21, in light
10 of the recent U.S. Supreme Court decision in *United States v. Jones*, 132 S.Ct. 945
11 (2012). The Court grants Mr. Smith’s motion for leave to file, ECF No. 20, and
12 considers Mr. Smith’s motion at ECF No. 21. In Mr. Smith’s underlying motion
13 for immediate return of all property, ECF No. 21, he asserts that a Global-
14 Positioning-System (“GPS”) tracking device was affixed to Ms. DeLong’s vehicle,
15 so the seizure of property in this case is affected by the *Jones*, 132 S.Ct. 945,
16 decision, which concerned the applicability of the Fourth Amendment to instances
17 where law enforcement attach GPS devices to vehicles. Because the Court already
18 has determined that it will not assume jurisdiction over the Rule 41(g) motions for
19 return of property and because any search of Ms. DeLong’s vehicle is not before
20 the Court on any of those Rule 41(g) motions, the Court finds that Mr. Smith’s
21 arguments should be directed toward the issue of whether evidence should be

1 suppressed in a criminal proceeding. The motion for immediate return of
2 property, ECF No. 21, on the basis of *Jones*, 132 S.Ct. 945, is denied.

3 Accordingly, **IT IS HEREBY ORDERED** that:

- 4 1. Mr. Olson's, **ECF No. 2**, Mr. Darjany's, **ECF No. 3**, and Mr. Smith's,
5 **ECF No. 4**, motions to quash, suppress, and return property are
6 **DENIED IN REMAINING PART WITHOUT PREJUDICE**, and
7 Mr. Smith's "Motion to Hold Evidence Seized from 78 Parcels
8 Pending Criminal Investigation of Agents and Actors or To Compel
9 the Return of Items Seized for Failure to Establish Probable Cause of
10 Title 11 Violations," **ECF No. 25**, is **DENIED WITHOUT**
11 **PREJUDICE**. The Movants may move to reopen their case and
12 renew their motions for return of property in the event that the
13 investigation does not result in an indictment and/or the Government
14 appears to have abandoned its investigation at the conclusion of 90
15 days after the date of this Order.
- 16 2. Mr. Smith's Motion for Leave to File, **ECF No. 20**, is **GRANTED**,
17 and Mr. Smith's Motion for Immediate Return of All Property Based
18 Upon New Evidence, **ECF No. 21**, is **DENIED**.
- 19 3. Mr. Smith's Motion for Reconsideration of the Court's Order at ECF
20 No. 19, **ECF No. 24**, is **DENIED**.

4. Mr. Smith's Motion to Strike Submissions for Lack of Standing, ECF No. 37, ECF No. 37, is **DENIED**.

The District Court Executive is directed to enter this Order, enter Judgment in accordance with this Order, provide copies to counsel and to Movants, and close the file in this matter.

DATED this 2nd day of April 2012.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Chief United States District Court Judge